

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD LOUIS PHILLIPS,

Defendant-Appellant.

UNPUBLISHED

December 18, 2001

No. 225789

Ingham Circuit Court

LC No. 99-074755-FH

Before: Meter, P.J., and Jansen and Gotham*, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant, defendant's daughter, testified that on one occasion when she was eleven or twelve years old, defendant pinned her to the sofa, unbuttoned her shirt, removed her shorts and underwear, removed his own shorts, and rubbed his testicles on a portion of her upper leg. Complainant gestured to her body to point out the area in which defendant made contact. Complainant testified that she kicked and bit defendant and that he released her.

The trial court denied defendant's motion for a directed verdict. The trial court concluded that issues of credibility should be resolved by the jury.

Defendant testified on his own behalf and denied that the incident alleged by complainant occurred. The jury convicted defendant as charged.

In reviewing a sufficiency of the evidence question, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998), modified 462 Mich 415; 615 NW2d 691 (2000). A trier of fact may make reasonable inferences from evidence in the record but may

* Circuit judge, sitting on the Court of Appeals by assignment.

not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

If the evidence is insufficient to support a conviction, due process requires that the trial court direct a verdict of acquittal. MCR 6.419(A); *People v Lemmon*, 456 Mich 625, 633-634; 576 NW2d 129 (1998). When ruling on a motion for a directed verdict, the trial court must consider the evidence presented by the prosecutor and determine whether a rational trier of fact could find that the elements of the charged offense were proven beyond a reasonable doubt. *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997). Questions regarding the credibility of witnesses are to be left to the trier of fact. *People v Pena*, 224 Mich App 650, 659; 569 NW2d 871 (1997), modified in part on other grds 457 Mich 885; 586 NW2d 925 (1998). We review a trial court's ruling on a motion for a directed verdict de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

A person is guilty of CSC II if he engages in sexual contact with another person under certain defined circumstances, including if the other person is under thirteen years of age. MCL 750.520c(1)(a). Sexual contact constitutes the intentional touching of the victim's or actor's intimate parts if the touching can "reasonably be construed as being for the purpose of sexual arousal or gratification." MCL 750.520a(k); *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997).

Defendant argues that insufficient evidence was presented to support his conviction of CSC II and that the trial court erred by failing to grant his motion for a directed verdict. We disagree and affirm. The undisputed evidence showed that complainant was under thirteen years of age when the charged incident occurred. Complainant testified that defendant unbuttoned her shirt, removed her shorts and underwear, and rubbed his testicles on her upper leg. The jury was entitled to believe this testimony, notwithstanding the fact that complainant's testimony regarding the location of the contact was not extremely precise. *Wolfe, supra*; see also *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Furthermore, given the circumstances under which the charged incident occurred, the jury could reasonably infer that defendant engaged in sexual contact with complainant for the purpose of sexual arousal or gratification. MCL 750.520a(k); *Vaughn, supra*. No corroboration of complainant's testimony was required. MCL 750.520h. The trial court did not err by denying defendant's motion for a directed verdict, *Vincent, supra*, and the evidence, viewed in a light most favorable to the prosecution, supported defendant's conviction of CSC II. MCL 750.520c(1)(a); *Wolfe, supra*.

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham